

STANLEY USTAN

IBLA 82-111

Decided March 2, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offer CA 9057.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

A first-drawn drawing entry card in a simultaneous filing held prior to May 23, 1980, was a noncompetitive offer to lease oil and gas and did not create a property right in the offeror. No rights to a lease survive the withdrawal of such offer.

2. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

3. Oil and Gas Leases: Lands Subject to

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

APPEARANCES: Stanley Ustan, pro se.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

Stanley Ustan has appealed the decision of the California State Office, Bureau of Land Management (BLM), dated October 15, 1981, rejecting his noncompetitive oil and gas lease offer, CA 9057, for the N 1/2, S 1/2 SE 1/4 sec. 26, T. 31 S., R. 24 E., Mount Diablo meridian, because those lands are encompassed by active oil and gas lease CA 1715 and thus are unavailable for leasing.

In his statement of reasons, appellant explains that the lands at issue were originally part of oil and gas lease S 66257 which terminated by operation of law on May 31, 1971, and were listed along with sec. 22, T. 31 S., R. 24 E., Mount Diablo meridian, as parcel 23 for the June 1971 simultaneous drawing. Appellant received first priority at that drawing for the parcel. He received lease S 4550 for sec. 22, but his offer was rejected for the N 1/2, S 1/2 SE 1/4 sec. 26 because these lands were included in a recreation plan for Power Project No. 2426, the California Aqueduct, and it was determined that oil and gas development would not be compatible with the proposed recreation and wildlife improvement project. Appellant did not appeal that decision because he believed that to do so would be to no avail and withdrew his offer as to the rejected lands in order to expedite return of the rentals paid. He points out that he concluded the withdrawal letter by stating that if the lands were again open for oil and gas development then he should receive major consideration for lease issuance by virtue of his priority established at the June 1971 drawing. <sup>1/</sup> Appellant further argues that oil and gas lease CA 1715, held by Continental Oil Company (Conoco), was improperly issued because the lands should have been offered for simultaneous filing. He notes that Conoco did not participate in the June 1971 drawing. Appellant argues that he withdrew his offer "only for the reasons given by his government" and "[w]hen the reasons given by government are faulty or are subject to frequent change, Appellant having earned the right to these lands by process of law, should have these lands returned to base lease S 4550 from which they were taken."

Under provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil and gas deposits "may be leased by the Secretary." 30 U.S.C. § 226(a) (1976). The Act requires that if a noncompetitive lease is issued, it must go to the first-qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id.

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<sup>1/</sup> In response to appellant's statement, BLM, by letter dated Mar. 17, 1972, informed him that "[n]o priority is established by the filing of the lease offer in the June 1971 simultaneous filing procedures which commands a lease issuance to you at some future date for that portion which has been rejected." BLM also told him that there was little likelihood that the lands would be made available for leasing in the near future.

[1] Under the simultaneous leasing system, a drawing is held to determine the order in which BLM will consider simultaneously filed drawing entry cards (DEC's). Prior to May 23, 1980, DEC's constituted offers to lease. Now they are merely applications which entitle the successful drawees to submit offers. A first-drawn DEC does not mean automatic entitlement to a lease, but rather merely establishes the priority for consideration. An offer to lease for oil and gas does not create a property right in the offeror, but is merely a hope or expectation. Fen F. Tzeng, 68 IBLA 381 (1982). See McTiernan v. Franklin, 508 F.2d 885, 888 (10th Cir. 1975); Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971). When appellant chose not to appeal the partial rejection of offer S 4550, and withdrew the offer as to the rejected lands, his expectation of obtaining a lease for those lands based on that offer ended. No rights survived the withdrawal of his offer. See Virgil V. Peterson, 66 IBLA 156 (1982).

[2] Departmental regulations in effect at the time of issuance of oil and gas lease CA 1715 provided that land formerly covered by an oil and gas lease that had terminated must be posted under the simultaneous procedures set out in 43 CFR 3112, and only if no simultaneous filings were received did the land become available to over-the-counter filings. 43 CFR 3112.1-1 (1976). The Board held as well that under these regulations, where all simultaneous filings for a particular parcel were withdrawn or rejected, the lands must be posted for simultaneous filing again. L. A. Walstrom, Jr., 36 IBLA 397 (1978); David A. Provinse, 33 IBLA 312 (1978); Edward M. Digneo, 22 IBLA 4 (1975). 2/

Review of the case files now before us indicates that the lands at issue, the N 1/2, S 1/2 SE 1/4, sec. 26, T. 31 S., R. 24 E., Mount Diablo meridian, were posted for simultaneous filings only once following termination of lease S 66251 and 65 offers were received. Appellant received first priority, but his offer was rejected. BLM, if it desired to lease the lands, should have posted the lands as available for simultaneous lease offers. In absence of such posting, the lands were not available for leasing, and any lease issued is void as to such lands and should be canceled. Paul S. Coupey, 64 IBLA 146 (1982); Claude C. Kennedy, 12 IBLA 183 (1973). Therefore, BLM is directed to take action pursuant to 43 CFR 3112.6-3 to cancel lease CA 1715 unless the rights of a bona fide purchaser have intervened or facts not apparent in the record before us would require otherwise.

[3] Regardless of the foregoing, BLM properly rejected appellant's offer to lease because the lands are embraced by an outstanding lease. The Board has repeatedly held that, to the extent an offer to lease embraces lands presently under lease, the offer is properly rejected regardless of whether the lease is void, voidable, or valid. James M. Chudnow, 67 IBLA 143 (1982); Curtis Wheeler, 56 IBLA 58 (1981); David A. Provinse, 45 IBLA

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2/ The current version of 43 CFR 3112.1-1 also requires leasing by simultaneous filings for lands covered by terminated leases. Under 43 CFR 3112.7, however, posting for simultaneous leasing must be repeated only when more than 10 applications for the land are received at the first drawing and only for a maximum of three drawings before the lands are available for regular noncompetitive filing under 43 CFR 3111.

111 (1980). Furthermore, on the record before us appellant's offer is also properly rejected for the same reason that Conoco's lease must be canceled: the land is subject to the filing of lease offers only in accordance with the simultaneous filing procedures. Curtis Wheeler, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Will A. Irwin  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

